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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,354	02/19/2004	Steven D. Ritchie	RD39/17	4183
49716	7590	02/08/2005	EXAMINER	
EDWARD P. DUTKIEWICZ, ESQ. EDWARD P. DUTKEIWICZ, P.A. 640 DOUGLAS AVENUE DUNEDIN, FL 34698-7001			GILBERT, SAMUEL G	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/782,354

Applicant(s)

RITCHIE ET AL.

Examiner

Samuel G. Gilbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 is/are allowed.
- 6) ☒ Claim(s) 2-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Double Patenting***

Claims 2, 3, 5, 7, 8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,533,718. Although the conflicting claims are not identical, they are not patentably distinct from each other because the differences are obvious changes in the scope of the claims. The examiner is taking the ridge-like protrusions as lobes and the valleys between the protrusions to form a groove (figures 7 and 8). The number of protrusions would have been an ordinary design expedient to one of ordinary skill in the art.

Regarding the applicant's arguments, the base as claimed in '718 is considered a flange as claimed in claim 5. Further the groove in figures 7 and 8 run the length of the head portion are linear and, however, that limitation is not present in the rejected claims. The rejection of claim 1 has been withdrawn.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2, 3 and 5-7 rejected under 35 U.S.C. 102(b) as being anticipated by Kain.

Claims 1-3 - Applicant's attention is invited to the embodiment of Figures 1-3. Element -14- is a bi-lobar head portion with a groove between the lobes as can be best seen in Figure 2. The shaft extends from element -114- to element -24- a gripping portion.

Claim 5 - the examiner is taking the flange to be on either side of necked down region -26-.

Claim 6 - the shaft is curved between -26- and -16-.

Claim 7 the shaft is straight between -14- and -16-.

The applicant argues that the head portion of Kain does not have a groove. The examiner disagrees and again would like to point to figure 2 where a groove is shown between the two lobes. The groove runs the length of the head. The rejection of claim 1 has been withdrawn.

Claims 2-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Jacobs(5,853,362).

The applicant's attention is invited to the embodiment of Figures 12-16. The examiner is taking element -52g- as a bi-lobar head, This is also shown in figure 1B at element -55j-. The gripping portion is shown generally at -62- and the flange at -66-. The shaft has a straight portion at -14- and the curved portion between -53g- and -14-. The shaft further includes a contiguous groove shown in figure -15-.

The applicant argues that the present application teaches a groove that originates at the tip of the device and does not traverse the tip of the device. These arguments are not persuasive because the examiner has not found these limitations in the rejected claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 rejected under 35 U.S.C. 103(a) as being unpatentable over Kain as applied to claim 2 above, and further in view of Ritchie et al (6,132,366).

Kain teaches a device as claimed made with a variety of materials including hard plastic, column 4 lines 33-34, but the use of borosilicate glass is not taught. Ritchie et al teaches the use of borosilicate glass for the manufacture of sexual aids. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the borosilicate glass taught by Ritchie et al in place of the hard plastic taught by Kain to gain the advantages of being resistant to heat, chemicals, electricity and bacterial absorption, column 3 lines 45-51, the having the added benefit of ease of lubrication, odor resistance and sterilizability as set forth in column 4 lines 14-29 of Kain.

The applicant's arguments are not persuasive because the claim does not call for a groove running the length of the shaft.

Claim 8 rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs as applied to claim 2 above, and further in view of Ritchie et al (6,132,366).

Jacobs teaches a device as claimed made with silicone, the use of borosilicate glass is not taught. Ritchie et al teaches the use of borosilicate glass for the manufacture of sexual aids. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the borosilicate glass taught by Ritchie et al in place of the silicone taught by Kain to gain the advantages of being resistant to heat, chemicals, electricity and bacterial absorption, column 3 lines 45-51, the having the added benefit of ease of lubrication, odor resistance and sterilizability as set forth in column 4 lines 14-29 of Kain.

The applicant's arguments are not persuasive because the claim does not preclude the groove from traversing the tip of the device.

***Allowable Subject Matter***

Claim 1 is allowed.

The following is a statement of reasons for the indication of allowable subject matter: The prior art does not teach or fairly suggest a device as claimed including a groove a contiguous groove running the length of the shaft and the length of the head.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G Gilbert whose telephone number is 703-308-3553. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 703-308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Samuel G Gilbert  
Primary Examiner  
Art Unit 3736

sgg